

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Orlando Garcia,

Plaintiff,

v.

Connie Leung, in individual and
representative capacity as trustee of
the Wong/Leung Family Trust,
U.D.T (“ Under Declaration of
Trust”) dated May 16, 2016;
Kin Chung Wong, in individual and
representative capacity as trustee of
the Wong/Leung Family Trust,
U.D.T (“ Under Declaration of
Trust”) dated May 16, 2016;
Dragon City, Inc., a California
Corporation

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Orlando Garcia complains of Connie Leung, in individual and
representative capacity as trustee of the Wong/Leung Family Trust, U.D.T (“
Under Declaration of Trust”) dated May 16, 2016; Kin Chung Wong, in

individual and representative capacity as trustee of the Wong/Leung Family Trust, U.D.T (“ Under Declaration of Trust”) dated May 16, 2016; Dragon City, Inc., a California Corporation; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff suffers from Cerebral Palsy. He has manual dexterity issues. He cannot walk. He uses a wheelchair for mobility.

2. Defendants Connie Leung and Kin Chung Wong, in individual and representative capacity as trustee of the Wong/Leung Family Trust, U.D.T (“ Under Declaration of Trust”) dated May 16, 2016, owned the real property located at or about 1068 Stockton St, San Francisco, California, in July 2021.

3. Defendants Connie Leung and Kin Chung Wong, in individual and representative capacity as trustee of the Wong/Leung Family Trust, U.D.T (“ Under Declaration of Trust”) dated May 16, 2016, own the real property located at or about 1068 Stockton St, San Francisco, California, currently.

4. Defendant Dragon City, Inc. owned AA Bakery & Café located at or about 1068 Stockton St, San Francisco, California, in July 2021.

5. Defendant Dragon City, Inc. owns AA Bakery & Café located at or about 1068 Stockton St, San Francisco, California, currently.

6. Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the property and business, or their relative responsibilities in causing the access violations herein complained of, and alleges a joint venture and common enterprise by all such Defendants. Plaintiff is informed and believes that each of the Defendants herein is responsible in some capacity for the events herein alleged, or is a necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend when the true names, capacities, connections, and responsibilities of the Defendants

are ascertained.

JURISDICTION & VENUE:

7. The Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

8. Pursuant to supplemental jurisdiction, an attendant and related cause of action, arising from the same nucleus of operative facts and arising out of the same transactions, is also brought under California's Unruh Civil Rights Act, which act expressly incorporates the Americans with Disabilities Act.

9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is founded on the fact that the real property which is the subject of this action is located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

10. Plaintiff went to AA Bakery & Café in July 2021 with the intention to avail himself of its goods or services motivated in part to determine if the defendants comply with the disability access laws. Not only did Plaintiff personally encounter the unlawful barriers in July 2021, but he wanted to return and patronize the business again but was specifically deterred due to his actual personal knowledge of the barriers gleaned from his encounter with them.

11. AA Bakery & Café is a facility open to the public, a place of public accommodation, and a business establishment.

12. Unfortunately, on the date of the plaintiff's visit, the defendants failed to provide wheelchair accessible sales counters in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

13. AA Bakery & Café provides sales counters to its customers but fails to

1 provide any wheelchair accessible sales counters.

2 14. One problem that plaintiff encountered was that the sales counter was
3 too high. There was no counter that was 36 inches or less in height that plaintiff
4 could use for his transactions. In fact, the sales counter was about 58 inches in
5 height.

6 15. Plaintiff believes that there are other features of the sales counters that
7 likely fail to comply with the ADA Standards and seeks to have fully compliant
8 sales counters available for wheelchair users.

9 16. On information and belief, the defendants currently fail to provide
10 wheelchair accessible sales counters.

11 17. These barriers relate to and impact the plaintiff's disability. Plaintiff
12 personally encountered these barriers.

13 18. As a wheelchair user, the plaintiff benefits from and is entitled to use
14 wheelchair accessible facilities. By failing to provide accessible facilities, the
15 defendants denied the plaintiff full and equal access.

16 19. The failure to provide accessible facilities created difficulty and
17 discomfort for the Plaintiff.

18 20. The defendants have failed to maintain in working and useable
19 conditions those features required to provide ready access to persons with
20 disabilities.

21 21. The barriers identified above are easily removed without much
22 difficulty or expense. They are the types of barriers identified by the
23 Department of Justice as presumably readily achievable to remove and, in fact,
24 these barriers are readily achievable to remove. Moreover, there are numerous
25 alternative accommodations that could be made to provide a greater level of
26 access if complete removal were not achievable.

27 22. Plaintiff will return to AA Bakery & Café to avail himself of its goods or
28 services and to determine compliance with the disability access laws once it is

1 represented to him that AA Bakery & Café and its facilities are accessible.
 2 Plaintiff is currently deterred from doing so because of his knowledge of the
 3 existing barriers and his uncertainty about the existence of yet other barriers
 4 on the site. If the barriers are not removed, the plaintiff will face unlawful and
 5 discriminatory barriers again.

6 23. Given the obvious and blatant nature of the barriers and violations
 7 alleged herein, the plaintiff alleges, on information and belief, that there are
 8 other violations and barriers on the site that relate to his disability. Plaintiff will
 9 amend the complaint, to provide proper notice regarding the scope of this
 10 lawsuit, once he conducts a site inspection. However, please be on notice that
 11 the plaintiff seeks to have all barriers related to his disability remedied. See
 12 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 13 encounters one barrier at a site, he can sue to have all barriers that relate to his
 14 disability removed regardless of whether he personally encountered them).
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16 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 17 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 18 Defendants.) (42 U.S.C. section 12101, et seq.)

19 24. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 20 again herein, the allegations contained in all prior paragraphs of this
 21 complaint.

22 25. Under the ADA, it is an act of discrimination to fail to ensure that the
 23 privileges, advantages, accommodations, facilities, goods and services of any
 24 place of public accommodation is offered on a full and equal basis by anyone
 25 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 26 § 12182(a). Discrimination is defined, inter alia, as follows:

- 27 a. A failure to make reasonable modifications in policies, practices,
 28 or procedures, when such modifications are necessary to afford

1 goods, services, facilities, privileges, advantages, or
2 accommodations to individuals with disabilities, unless the
3 accommodation would work a fundamental alteration of those
4 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

5 b. A failure to remove architectural barriers where such removal is
6 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
7 defined by reference to the ADA Standards.

8 c. A failure to make alterations in such a manner that, to the
9 maximum extent feasible, the altered portions of the facility are
10 readily accessible to and usable by individuals with disabilities,
11 including individuals who use wheelchairs or to ensure that, to the
12 maximum extent feasible, the path of travel to the altered area and
13 the bathrooms, telephones, and drinking fountains serving the
14 altered area, are readily accessible to and usable by individuals
15 with disabilities. 42 U.S.C. § 12183(a)(2).

16 26. When a business provides sales counters, it must provide accessible
17 sales counters.

18 27. Here, accessible sales counters have not been provided in conformance
19 with the ADA Standards.

20 28. The Safe Harbor provisions of the 2010 Standards are not applicable
21 here because the conditions challenged in this lawsuit do not comply with the
22 1991 Standards.

23 29. A public accommodation must maintain in operable working condition
24 those features of its facilities and equipment that are required to be readily
25 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

26 30. Here, the failure to ensure that the accessible facilities were available
27 and ready to be used by the plaintiff is a violation of the law.
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II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

31. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia, that persons with disabilities are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishment of every kind whatsoever within the jurisdiction of the State of California. Cal. Civ. Code § 51(b).

32. The Unruh Act provides that a violation of the ADA is a violation of the Unruh Act. Cal. Civ. Code, § 51(f).

33. Defendants’ acts and omissions, as herein alleged, have violated the Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s rights to full and equal use of the accommodations, advantages, facilities, privileges, or services offered.

34. Because the violation of the Unruh Civil Rights Act resulted in difficulty, discomfort or embarrassment for the plaintiff, the defendants are also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-(c).)

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

1 2. For equitable nominal damages for violation of the ADA. See
2 Uzuegbunam v. Preczewski, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
3 and any other equitable relief the Court sees fit to grant.

4 3. Damages under the Unruh Civil Rights Act, which provides for actual
5 damages and a statutory minimum of \$4,000 for each offense.

6 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
7 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

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9 Dated: August 26, 2021

CENTER FOR DISABILITY ACCESS

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12 By: _____



13 Amanda Seabock, Esq.
14 Attorney for plaintiff
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